IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.129 OF 2007

Union of India ...Appellant

Versus

Smt.Shakuntala Ganpat Sawane ...Respondent

Shri T.J.Pandian for the Appellant.

Shri Shrishailya S. Deshmukh for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : FEBRUARY 28, 2007.

P.C.:

1. Heard Advocates appearing for the parties. The challenge in this Appeal is to the Judgment and Order dated 31st August, 2006 passed by the Railway Claims Tribunal, Mumbai Bench, Mumbai in a claim Application invoking section 124A of the Railways Act, 1989.

2. The first Respondent is the mother of deceased Rajendra. The second Respondent is the brother of the deceased. According to the case of the Respondents, when the deceased was travelling from Dombivali to Churchgate, he accidentally fell down from suburban local train on 10th December, 2001. The contention of the Appellant is that it was not a case of accidental fall but, the deceased was knocked down by a train. The Appellant denied that the deceased was a bonafide

passenger.

3. The Tribunal did not accept the case made out by the Appellant and passed an order directing the Appellant to pay compensation of Rs.4,00,000/- to the first Respondent with interest thereon at the rate of 6% per annum.

4. The learned Advocate for the Appellant submitted that the case was not covered by a untoward incident as defined under section 123(C)(2) of the said Act of 1989. He submitted that according to the station memo the deceased was knocked down by a train and it was not at all a case of accidental fall.

5. Perusal of the Judgment of the Tribunal shows that the the Tribunal has considered the oral evidence of one Amit Dattatraya Kawale. The said witness deposed that at the time of incident he was travelling with the deceased and had seen the deceased accidentally falling down from the train and dashing against the adjacent railway pole. The Tribunal also referred to inquest panchnama which records that the deceased died on the spot as a result of fall from a train. The learned Tribunal found that even the A.D.R recorded by the Police Station discloses the same fact. The Appellant

did not lead any evidence to prove the correctness of the station memo. That is the reason why the Tribunal has accepted the case of accidental fall of the deceased from the train.

6. The Tribunal referred to the evidence of the said witness Amit Kawale who deposed that the deceased purchased tickets for journey from Dombivali to Churchgate and the said witness alongwith two other friends were travelling with the deceased. He stated that the deceased had kept all the four tickets in his pocket which were lost as a result of the accident. It was sought to be contended that inquest panchnama is silent about recovery of railway tickets. The Tribunal has, however, accepted the possibility of railway tickets getting lost in such incident. The Tribunal has considered the oral and documentary evidence on record and has accepted the case that the deceased died as a result of an untoward incident. The Tribunal has also accepted the case that he was a bonafide passenger. I find no error in the view taken by the Tribunal. There is no merit in the Appeal and the same is dismissed with no orders as to costs.

JUDGE